

SERVICE DATE – LATE RELEASE NOVEMBER 22, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34773

NEVADA CENTRAL RAILROAD
– EXEMPTION FOR ACQUISITION AND OPERATION OF RAIL SERVICE –
IN ELKO AND WHITE PINE COUNTIES, NV

Decided: November 22, 2005

By notice filed on November 16, 2005, the Nevada Central Railroad (NCR), a Nevada corporation, invoked the class exemption procedure at 49 CFR 1150.31 et seq.¹ purportedly to authorize its acquisition and operation as a railroad common carrier of 134 miles of track. NCR describes the track by referring to a notice it indicates was filed with the Board on July 14, 2003, in Nevada Central Railroad – Construction and Operation – In Clark, Elko, Eureka, Lander, Nye and White Pine Counties, NV, STB Finance Docket No. 34382 (Nevada Central).² NCR states that the track is also described in a document “previously identified to” the “U.S. Secretary of the Interior.” NCR states that it is presently a noncarrier. Under 49 CFR 1150.32(b), the exemption (if proper) would be due to go into effect on November 23, 2005.

The notice will be rejected because it is unclear and fails to comport with the Board’s filing requirements.

The notice here refers to a line construction and indicates that NCR is not acquiring the property from an active railroad. However, the class exemption at section 1150.31 does not extend to rail line constructions as opposed to acquisitions. Moreover, to be eligible for consideration under the class exemption at 49 CFR 1150.31, the transaction must involve the acquisition of an active line of railroad.

The notice also lacks a sufficient description of the traffic that (a) is currently moving over the track and (b) will move over the track under the proposed operation to permit the Board to determine whether the environmental disclaimer (“no significant changes in carrier

¹ In its notice, NCR sometimes cites the regulations governing exempt abandonments of service (49 CFR 1152.50), but the context of its statements makes it clear that NCR is referring to section 1150.31.

² It appears likely that the notice referred to was submitted only to the Board’s Section of Environmental Analysis.

operations”) is facially adequate. Indeed, the information in the notice raises questions about the validity of the disclaimer. As noted, NCR describes the track by referring to a prior submission in Nevada Central. There, the applicant projected that there would be billions of dollars worth of traffic and that the traffic would include spent nuclear fuel. The Board must know more about the nature of current and projected traffic in order to assess the environmental disclaimer. And, given this history, the lack of credible information about current and projected traffic also raises sufficient doubts to preclude the Board from accepting at face value NCR’s assertion that it will become a Class III carrier and that it thus need not comply with the requirements of 49 CFR 1150.32(e) or 1150.35.

Moreover, NCR has failed to provide the telephone number of its legal representative, Robert Alan Kemp, as required by 49 CFR 1150.33(b). Nor is the caption summary required by 49 CFR 1150.34 in the form required by that provision.

NCR also appears to have failed to provide the “name and address of the railroad transferring the subject property,” as required by section 1150.33(e)(1), and to identify that party clearly. From the notice, it is unclear whether the current owner is the Los Angeles Department of Water and Power, BHP Nevada Railroad Company, or possibly the Nevada Northern Railway,³ and whether the property being acquired, assertedly through condemnation procedures, is a line of railroad subject to Board jurisdiction.

Under these circumstances, the notice must be rejected.

On November 21, 2005, White Pine Energy Associates, LLC and the City of Ely, NV, filed a motion requesting that the Board find the exemption sought by NCR void ab initio or that the Board stay the effectiveness of the sought exemption. In light of the rejection of NCR’s notice, the motion is moot.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The notice of exemption in this proceeding is rejected.

³ The Board has records of a “Northern Nevada Railroad Corporation.” If this is the transferring party, NCR should so state and provide the address.

2. This decision is effective on its date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary